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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,491	09/11/2001	Mark DeRaud	512.02	8054

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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/954,491

**Applicant(s)**

DERAUD ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article on " Pizza Inversion" by Brad Appleton.

The article teaches to fold one half of the slice over the other half. It is also teach to fold the pointed end of the slice towards the crust end. (see page 4)

The article does not teach the combination of folding the end portion and then folding one half over the other half and the percent of end portion as claimed.

It would have been obvious to one skilled in the to combine folding of the end portion toward the crust and then folding one half over the other half if one want a closed pocket to further ensure that the topping and sauce will not drip out easily. Both foldings are known and to combine them when one wants a more closed in pocket would have been readily apparent to one skilled in the art. The percent of the folded end depends on the length of the slice and how far one wants to fold. This can readily be determined by one skilled in the art. It would also have been obvious to fold pizza slice having any configuration. Wedge shape, round shape and square shape are all conventional shape for pizza.

Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article on " Pizza Inversion " by Brad Appleton in view of the cookbook " Cooking A to Z".

The article teaches to fold one half of the slice over the other half. It is also teach to fold the pointed end of the slice towards the crust end. (see page 4)

The article does not the combination of folding the end portion and then folding one half over the other half, the percent of end portion as claimed and pizza slice in which an end portion is substantially free of toppings and sauce.

The cookbook shows a pizza slice in which one end is substantially free of topping.

It would have been obvious to one skilled in the to combine folding of the end portion toward the crust and then folding one half over the other half if one want a closed pocket to further ensure that the topping and sauce will not drip out easily. Both foldings are known and to combine them when one wants a more closed in pocket would have been readily apparent to one skilled in the art. The percent of the folded end depends on the length of the slice and how far one wants to fold. This can readily be determined by one skilled in the art. It would also have been obvious to fold pizza slice having any configuration. Wedge shape, round shape and square shape are all conventional shape for pizza. As to the end being free of topping and sauce, pizza is a very versatile food product. Many types of crust, topping and sauce can be used. The placement of the topping and quantity of topping and sauce can vary accordingly to taste. It would have been obvious to make a pizza without topping at one end as shown by the cooking depending on the quantity of topping wanted. It would also have been obvious to omit the sauce on a portion of the pizza depending upon the quantity of sauce wanted.

In the response filed Dec. 6, 2004, applicant argues there is no established facie case of obviousness based only on the Appleton article because it fails to teach or

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suggest applying the combination of folds. This argument is not persuasive. The article teaches folding lengthwise or folding the pointed end toward the crust. Folding one way does not totally enclosing the sauce and topping; this is readily recognized by one skilled in the art. The combination of folding will give a more total enclosure. Also, the combination of fold will give a smaller configuration which facilitates handling. All these variations would have been readily apparent to one skilled in the art. There is wide variation in the way people consume food products. When both ways of folding are known, the use of the combination of the folds is a variation that would have been readily apparent to one skilled in the art. Applicant further argues the article actually teaches away from the claimed method. Applicant cites the example where the article teaches "one needs to be extra careful when using a single slice and/or when the pizza has extra cheese because then excess cheese can easily ooze out the side and burn your mouth". This disclosure does not teach away from the claimed method; instead, this disclosure recognizes the problem of having topping oozes out. Thus, this provide the motivation for why one would want to form a closed pocket and the combination of folds to the pizza slice will give a more closed pocket. Applicant further argues the examiner has not shown the motivation or desirability to modify the two separate folds and the combination of the two folds is counter-intuitive because the slice will resist a second fold. The examiner respectfully disagrees with applicant that the rejection does not provide motivation to combine the two folds. The desirability or motivation to combine the folds is set forth above. To reiterate, one would be motivated to combine the folds to form a more closed pocket to prevent toppings and sauce from

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dripping out and also to reduce the size of the pizza slice which facilitates handling.

With respect to the cookbook, applicant argues the cookbook shows a whole pizza with at least cheese throughout the entire surface. While the pizza has cheese throughout the surface, the cookbook does show that the other toppings are limited to certain area.

What the cookbook suggested is the versatility in making pizza. For example, it would have been obvious to omit the cheese in one area if one wants to reduce the fat content and calorie of the pizza.

In the response filed Dec. 6, 2004, applicant also submits a declaration to demonstrate the unobviousness of the claimed method. The declaration sets forth a series of works done by Mr. Marc Halperin and his opinion on how the combination of folds to the pizza slice was new and not obvious. However, the declaration does not set forth any evidence to show how or why the combination of folds would not have been obvious to one skilled in the art. The declaration does not contain information, showing, evidence, fact to show that one skilled in the art would be discourage from folding the pizza slice both lengthwise and pointed end up. Both of the folds are known as shown by the article and to combine these folds would have been obvious to one skilled in the art as set forth in the rejection. The declaration does not have any showing of fact to dispute this position. While stating that the elimination of topping in certain area would not have been obvious, the declaration does not have any evidence to support this statement. Thus, the declaration is not found to be persuasive.

Applicant's arguments filed Dec. 6, 2004 have been fully considered but they are not persuasive.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 15, 2005

  
LIEN TRAN  
PRIMARY EXAMINER  
